IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1352 OF 2004

Rajkumar Gajendrakumar Jaiswal. ...Petitioner
V/s.
The State of Maharashtra. ...Respondent

Mr.Ganesh Gole for Petitioner.
Mr.D.P. Adsule, A.P.P. for State.

CORAM : A.S. AGUIAR, J.
DATED : SEPTEMBER 3, 2004.

P.C. :-

1. Rule. By consent, Rule made returnable forthwith.

2. By this petition, petitioner seeks quashing of the order dated 29th June, 2004 passed by the learned Joint District Judge and Additional Sessions Judge, Thane, in C.R.A. No.113/2004 remanding the petitioner Rajkumar Jaiswal to police custody till 12th July, 2004 as well as the order dated 30th June, 2004 passed by the learned J.M.F.C. Vashi, directing the petitioner to surrender before the Court or to the police.

3. It is pointed out that the order dated 29th

June, 2004 came to be passed by the Additional Sessions Judge, Thane, remanding the petitioner/accused to police custody on the application of the police (State) which was aggrieved by the order of the J.M.F.C. dated 23.6.2004 directing that the petitioner-accused no.1 be remanded to judicial custody instead of police custody. It is pointed by the learned Advocate for the petitioner that on 28th June, 2004, the learned J.M.F.C. had passed an order releasing the petitioner on bail. At that stage, Learned P.P. had filed his say before the Court and it was only after hearing the P.P. that the order of bail dated 28th June, 2004 came to be passed. However, when the revision application from order dated 23rd June, 2004 came up on board on 29th June, 2004 before the Additional Sessions Judge, learned P.P. appearing on behalf of the State failed to point out that the accused petitioner herein had been granted bail by the J.M.F.C. one day earlier i.e. 28th June,2004.

4. In his affidavit before this Court, Assistant Police Inspector Subhash Lele, Investigating officer, has stated that when he visited Central Thane Prison on

29th June, 2004, he learnt that the petitioner was released on bail in the morning from the Thane Central Prison. He has further stated that no notice of the said bail application was given to him or the concerned police station by the petitioner or his Advocate and the impugned order of bail, therefore, came to be passed behind his back and that immediately on learning of the bail order passed on 28th June, 2004, State moved application for cancellation of bail before the learned J.M.F.C. who by impugned order dated 30th June,2004 directed the petitioner to surrender before the Court.

5. Whether the concerned Officer or the P.P. was aware of the bail order passed in favour of the petitioner on 28th June,2004 or not, is a moot point. The fact remains that the impugned order viz. order dated 29th June, 2004 by the Additional Sessions Judge in C.R.A.No.113/2004 directing the petitioner to be remanded to police custody was passed despite the order of the J.M.F.C. passed one day earlier granting bail to the petitioner. In these circumstances, the said order of the Additional Sessions Judge dated 29th June, 2004

was infructuous. The petitioner could not be directed to be remanded to police custody as he was neither in custody of the police nor of the Magistrate on that day. In the circumstances, the subsequent order dated 30th June, 2004 passed by the Magistrate on the application of the State relying on the order passed by the Sessions court for cancellation of the bail is improper and hence, both the orders are required to be set aside. Rule accordingly made absolute in terms of prayer clauses (a) and (b).

6. Petition to stand disposed of.

7. Since the investigation in the matter is still in progress, petitioner to attend the Vashi Police Station before the concerned Investigating Officer once a week between 6.00 p.m. to 8.00 p.m. till the chargesheet is filed.

. Parties be supplied authenticated copy of this order.

(A.S. AGUIAR, J.)